

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Jesus People Church and Worship Center)	
	Ward 93, Block 400, Parcels 408 and 409)	Shelby County
	<i>Claims of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

These are appeals pursuant to Tenn. Code Ann. section 67-5-212(b)(2) concerning the effective dates of exemption of the subject properties from ad valorem taxation. The appellant, Jesus People Church ("JPC"), filed applications for exemption of these properties with the State Board of Equalization ("State Board") in January and March, 2007. In a letter dated April 9, 2007, State Board staff attorney Sabrina Williams initially determined that:

From February 8, 2005, the acquisition date, through August 1, 2005, the property is exempt to the extent of the value of the construction improvements. During that period, the land is taxable. Effective August 2, 2005, the property is granted 100% exemption.

Later that same day, however, Ms. Williams issued an amended initial determination letter which changed the effective date of exemption of the properties in question to January 1, 2007. Seeking reinstatement of the earlier effective dates, JPC timely appealed to the State Board. The undersigned administrative judge conducted a hearing of this matter on June 28, 2007 in Memphis. JPC was represented by its pastor, Gerald Kiner, Ph.D. Staff appraiser Tom Richie appeared on behalf of the Shelby County Assessor of Property ("Assessor").

Findings of Fact and Conclusions of Law

JPC was founded by Dr. Gerald Kiner about six years ago. In 2004, the fledgling institution applied for exemption of two residences in the city of Memphis: 4152 Friendly Way (Parcel No. 93-510-Q145) and 3698 Ironwood (Parcel No. 93-417-C66). Pastor Kiner stated on those applications that 4152 Friendly Way was occupied (by him) as a church parsonage, while 3698 Ironwood accommodated a "dance ministry" and other church-related functions (such as choir rehearsals). At that time, JPC held its regular worship services at a local Holiday Inn.

JPC's applications for exemption of 4152 Friendly Way and 3698 Ironwood were approved (effective January 19, 2004 and March 10, 2004, respectively) by former State Board staff attorney Regan Cothron. Her approval letter of February 22, 2005 advised Pastor Kiner that:

Unless there is a change in the ownership, use, name or organizational structure, no further action will be required on the part of the organization. [Emphasis added.]

The adjoining properties under appeal are located at 4392 and 4400 Hickory Hill Road in the Bluff City. JPC acquired these properties from Dr. Kiner and Natalee C. Peart, respectively – both of whom are trustees of the Church – by deeds dated February 2, 2005. Later that year, JPC completed construction of an expansive new church building at 4400 Hickory Hill (Parcel No. 93-400-409). The inaugural service at this facility occurred on August 7, 2005. Since then, JPC has purportedly used the three-bedroom house at 4392 Hickory Hill (Parcel No. 93-400-408) for storage and emergency shelter.

On August 16, 2005, apparently without informing the Assessor or the State Board, JPC: (a) quitclaimed its interest in 4152 Friendly Way to Dr. Kiner “to his sole and separate use”; and (b) quitclaimed its interest in 3698 Ironwood to Natalee C. Peart “to her sole and separate use.”¹ Notwithstanding the quoted phrases, Pastor Kiner maintained that he and Ms. Peart were acting as representatives on the Church in these transactions. According to his testimony, 4152 Friendly Way and 3698 Ironwood always remained in JPC’s “possession”; and the Church continued to make the mortgage payments on both properties.

Ms. Peart sold 3698 Ironwood to “Gerald Kiner, an unmarried man” on February 15, 2006 for \$100,000. As a result of what Dr. Kiner called a “mistaken” foreclosure, that property has ostensibly wound up in the portfolio of Household Financial Center, Inc.² The aforementioned “dance ministry” at 3698 Ironwood no longer exists; in fact, Dr. Kiner could not identify the current “tenant” (if any) at this address.

Dr. Kiner quitclaimed 4152 Friendly Way, where he still lives, back to JPC on March 20, 2007.

As the party seeking to change the (revised) initial determination on its applications for exemption, JPC has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

Under authority of Article II, section 28 of the Tennessee Constitution, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, **owned by any religious, charitable, scientific, or nonprofit educational institution** which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the

¹Neither of these quitclaim deeds referred to the grantee as a trustee of JPC.

²A substitute trustee’s deed was executed to Household Financial Center on July 27, 2006. Exhibit “A” to that document refers only to the conveyance of 3698 Ironwood to Ms. Peart in 2004, suggesting that the subsequent deeds to such property were not recorded. The ownership dispute involving 3698 Ironwood was still unresolved on the hearing date.

purposes for which the institution was created or exists...[Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(1)(A).

But no property may be exempted from taxation under Tenn. Code Ann. section 67-5-212 unless an application for such exemption has been approved in writing by the State Board. Tenn. Code Ann. section 67-5-212(b)(1). Further, Tenn. Code Ann. section 67-5-212(b)(2) explicitly states that “the exemption shall not be transferable or assignable and the applicant shall promptly report to the assessor any change in the use or ownership of the property that might affect its exempt status.”

Generally, an exemption of property owned by a church or other qualifying institution cannot take effect before January 1 of the year in which the application for such exemption is filed with the State Board. Tenn. Code Ann. section 67-5-212(b)(3)(A). However, as amended by the General Assembly in 2005, Tenn. Code Ann. section 67-5-212(b)(3)(B) now provides (in relevant part) that:

If a religious institution acquires property previously approved for a religious use exemption, **or property to replace its own property previously approved for a religious use exemption**, then the effective date of exemption shall be five (5) years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later. [Emphasis added.]

JPC’s quest for the effective dates of exemption specified in Ms. Williams’ “first” initial determination letter is entirely predicated on the above amendment. In Ms. Williams’ view, apparently, the Church was not entitled to the benefit of this statutory exception because of the revelation that:

After receiving exemptions on the properties at 4152 Friendly Way and 3698 Ironwood, the ownership of these properties were [sic] transferred to you, an individual. Subsequently, due to a default, the ownership of the property at 3698 Ironwood is now in the hands of “Household Financial Center, Inc.”, a third party. Neither ownership is eligible for an exemption and, therefore, cannot serve as the basis for an earlier exemption date.

To be sure, JPC should have notified the Assessor of the transfers of 4152 Friendly Way and 3698 Ironwood in August, 2005. Ms. Williams also correctly observed that that those properties were no longer exemptible under the ownership of an individual or for-profit entity.³ Yet the mere fact that JPC conveyed previously-exempted properties – even to persons affiliated with the Church – would not necessarily bar pre-2007 effective dates of exemption of the properties in question here. Indeed, one would ordinarily expect a church or other non-profit

³Even if Dr. Kiner were ultimately deemed to be the lawful owner of 3698 Ironwood, he would obviously not qualify for exemption of that (or any other) property in his individual capacity.

institution to sell, rent, or otherwise dispose of any property for which a suitable replacement has been obtained and put to its intended use.

In the opinion of the administrative judge, however, the appellant's characterization of the subject properties as "replacements" of 4152 Friendly Way and/or 3698 Ironwood is undermined by several other considerations. Neither property under appeal, of course, truly replaced the church parsonage (4152 Friendly Way); and while some (or all) of the meetings formerly held at 3698 Ironwood may have been moved to JPC's new 15,000-square-foot church building at 4400 Hickory Hill Road, it cannot legitimately be called a "replacement" for a single-family dwelling. After all, the parishioners had theretofore been worshipping in a rented hotel room – not at a location "previously approved for a religious use exemption."

Finally, by Pastor Kiner's own account, JPC never relinquished possession of 4152 Friendly Way or 3698 Ironwood – even when it did not hold legal title to those properties. It is difficult to conceive of the subject properties as replacements for ones which the Church still claims to control. Rather, the properties in question would more accurately be regarded as additions to JPC's real estate assets.

Order

It is, therefore, ORDERED that the subject properties shall be exempt from taxation as of January 1, 2007.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 30th day of July, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Pastor Gerald Kiner, Jesus People Church and Worship Center
Tom Richie, Shelby County Assessor's Office Exemption Department
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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